Editor's note: Reconsideration denied by order dated Aug. 24, 1981; Appealed -- voluntarily dismissed, Civ.No. 81-2050 (D.D.C.)

VINCENT M. D'AMICO
WOLT C. STEMPEL

IBLA 81-186, 81-190 Decided June 3, 1981

Appeals from decisions of the Utah State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease applications U-46723 and U-46730.

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Attorney-in-Fact or Agents

   An oil and gas lease application, Form 3112-1 (June 1980), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, are left unanswered.

2. Administrative Authority: Generally -- Federal Employees and Officers: Authority to Bind Government

   Reliance upon erroneous or incomplete information provided by Federal employees does not create any rights not authorized by law.

3. Notice: Generally -- Regulations: Generally -- Statutes
   All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

4. Administrative Authority: Generally -- Federal Employees and Officers: Authority to Bind Government

Estoppel will not lie where allegedly misleading advice is timely rebutted by existing regulations negating the advice given.

APPEARANCES: Bruce A. Budner, Esq., Dallas, Texas, for appellants; Hugh C. Garner, Esq., Salt Lake City, for Teresa Hatch.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Vincent M. D'Amico and Wolt C. Stempel appeal from separate decisions of the Utah State Office, Bureau of Land Management (BLM), dated November 20, 1980, rejecting the oil and gas lease application filed by each in the July 1980 drawing of simultaneously filed applications. Because the factual and legal issues posed by each appeal are identical, the cases have been consolidated for our review. 1/

In each case, appellant's application was rejected for the following reasons: "Offeror failed to fully execute the simultaneous oil and gas lease application by not completing items (d) through (f) on the reverse side and by failing to sign the application. 43 CFR 3112.2-1." An examination of each application confirms BLM's finding that questions (d) through (f) have not been completed. Further examination of D'Amico's application reveals the following words written by hand in a box labeled "Agent's Signature": "FEC agent for D'Amico." Stempel's application bears the corresponding words: "FEC agent for Stempel." The application used by each appellant is the newly-revised Form 3112-1 (June 1980).

BLM's reference to 43 CFR 3112.2-1 is a reference to a newly-revised regulation published on May 23, 1980, 45 FR 35156, effective June 16, 1980. This regulation states in part:

§ 3112.2 How to file an application.

§ 3112.2-1 Simultaneous oil and gas lease applications.

1/ Appellant D'Amico's application was selected with first priority for parcel UT 142. Appellant Stempel's application was similarly selected for parcel UT 149. Appellants are represented by the same counsel and have filed virtually identical statements of reasons. A brief from the second-drawn applicant for parcel UT 149, Teresa Hatch, has also been filed.

> (a) An application to lease under this subpart consists of a simultaneous oil and gas lease application on a form approved by the Director, Bureau of Land Management, completed, signed and filed pursuant to the regulations in this subpart. The first applicant for a lease, as determined under the regulations in this subpart, who is qualified to hold a lease under the Act and the regulations in this title shall be entitled to submit an offer for the lease as described in § 3112.4-1 of this title.
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> (b) The application shall be holographically (manually) signed in ink by the applicant or holographically (manually) signed in ink by anyone authorized to sign on behalf of the applicant. Applications signed by anyone other than the applicant shall be rendered in a manner to reveal the name of the applicant, the name of the signatory and their relationship. (Example: Smith, agent for Jones; or Jones, principal, by Smith, agent.) Machine or rubber stamped signatures shall not be used.

Prior to the revision of May 23, 1980, regulation 43 CFR 3112.2-1 stated: "Offers to lease such designated leasing units by parcel numbers must be submitted on a form approved by the Director, 'Simultaneous Oil and Gas Entry Card' signed and fully executed by the applicant or his duly authorized agent in his behalf." The revision changed the language, but the substantive requirement is still present. The application must be complete when first filed in order to be a valid application. This Board has consistently required strict compliance with the substantive requirements of the regulations concerning the filing of applications in the simultaneous oil and gas leasing procedures. See, e.g., Rose B. Carrington, 46 IBLA 149 (1980); Margaret H. Wygocki, 45 IBLA 79 (1980); John L. Messinger, 45 IBLA 62 (1980). Although these decisions arose under the former regulations, the requirement of strict compliance will still be enforced under the present regulations, and these decisions may be considered precedential.

Two independent grounds for rejection of appellant's applications appear in BLM's decisions: failure to complete items (d) through (f) on the reverse side of the application and failure to sign the application. Items (d) through (f) are a series of questions, each of which is followed by boxes to be checked "Yes" or "No" in response. The questions are:

> (d) Does any party, other than the applicant and those identified herein as other parties in interest, own or hold any interest in this application, or the offer or lease which may result?
>
> (e) Does any agreement, understanding, or arrangement exist which requires the undersigned to assign, or

by which the undersigned has assigned or agreed to assign, any interest in this application, or the offer or lease which may result, to anyone other than those identified herein as other parties in interest?

(f) Does the undersigned have any interest in any other application filed for the same parcel as this application?

These questions follow a series of statements requiring the undersigned to certify (a) that the applicant is a citizen of the United States (or in the case of a corporation that it is organized under the laws of the United States), (b) that the applicant is not a minor, and (c) that the applicant is in compliance with acreage limitations set forth in the regulations.

Appellants' applications were submitted to the Utah State Office as part of 5,357 applications submitted by Federal Energy Corporation (FEC), a filing service retained by appellants. Accompanying these applications, according to FEC's cover letter of July 17, 1980, were a single copy of FEC's service agreement with addendum, its brochure, a letter of authorization from the president of FEC listing the names of those persons qualified to sign on behalf of FEC, and a complete list of names and addresses of all FEC clients. The addendum to the service agreement substantially restated the declarations as to citizenship, age, and acreage appearing on form 3112.1. In addition, the addendum set forth with minor alterations the questions posed by items (d) through (f), quoted above. From information supplied by appellants' statement of reasons, it appears that the addendum submitted with appellants' applications was a blank copy of one used by FEC and its clients. Items (d) through (f) were apparently unanswered, and the form itself was apparently unsigned.

[1] Whether the addendum purportedly accompanying the application to lease is sufficient compliance with the instructions on the application and applicable regulations is easily resolved. Notwithstanding that the addendum was apparently unsigned and otherwise unanswered, the application form clearly contemplates that items (d) through (f) would be checked on the application itself. Indeed, the introductory words to items (a) through (g) are as follows: "UNDERSIGNED CERTIFIES AS FOLLOWS (check appropriate boxes)." (Original in italics). Nowhere do the application or regulations suggest that items (d) through (f) may be answered by attachment. Small boxes appear following each item to be checked in response. Although the application does contemplate that the names of other parties in interest or amendments to one's statement of qualifications may be submitted by attachment, the questions posed by items (d) through (f) are distinct issues. The statement of qualifications alluded to is addressed at 43 CFR 3102.2.

Failure of applicants to check the appropriate box in response to each of the questions, "d", "e", and "f", created defects in the applications that are far from trivial. The applications simply were not complete. The applicants do not have a right to cure such defects by later submitting the required information. See Ballard E. Spencer Trust, Inc. v. Morton, 544 F.2d 1067 (10th Cir. 1976).

Appellants seek to reverse BLM's decision on the basis of estoppel. Specifically, appellants contend that on June 26, 1980, the secretary-treasurer of FEC was advised by telephone by an employee of BLM that the answers to items (d) through (f) need not accompany or appear on the lease application, but instead could be retained by FEC in its files. Relying on this advice, FEC says, it did not answer items (d) through (f) on the application. Answers to these questions on the aforementioned addendum form, signed by appellants and dated prior to the drawing at issue, are proffered on appeal. A response by the BLM employee involved contradicts appellants contention in material part. While acknowledging that a filing service should retain in its files the answers of its clients to questions (d) through (f), the BLM employee specifically denies advising FEC that retaining such answers would eliminate the necessity to answer such questions on the application itself.

[2] Assuming, arguendo, that the facts are as stated by appellants, such facts entitle them to no relief on appeal. This Board has stated on numerous occasions that reliance upon information or opinion of any officer, agent, or employee cannot operate to vest any right not authorized by law. 43 CFR 1810.3(c), Dermot S. McGlinchey, 38 IBLA 211 (1978); WZL Investment Corp., 36 IBLA 355 (1978); Belton E. Hall, 33 IBLA 349 (1978).

Notwithstanding the correctness of this principle, appellants have not alleged facts which would entitle them to the extraordinary remedy of estoppel. In United States v. Georgia-Pacific Company, 421 F.2d 92 (9th Cir. 1970), the Ninth Circuit set forth the elements of estoppel:

(1) The party to be estopped must know the facts;

(2) he must intend that his conduct shall be acted on or must so act that the party asserting the estoppel has a right to believe it is so intended;

(3) the latter must be ignorant of the true facts;

(4) he must rely on the former's conduct to his detriment.

Appellants' argument in favor of estoppel must fail, because appellants cannot convincingly allege that they were ignorant of the true facts. In United States v. Georgia-Pacific, supra, the court noted that Georgia-Pacific had reason to rely on the validity of

Public Land Order (PLO) No. 1600 because "[t]here was no explicit statute, ruling, order or case authority to give Georgia-Pacific any indication whatsoever that PLO 1600 might have been issued pursuant to an improper delegation of authority * * *." Id. at 98.

In contradistinction to the Georgia-Pacific case, appellants had the clear wording of the lease application ("check appropriate boxes") and regulation 43 CFR 3112.2-1 to inform them of the proper procedure. Regulation 43 CFR 3112.2-1 states in part:

> (a) An application to lease under this subpart consists of a simultaneous oil and gas lease application on a form approved by the Director, Bureau of Land Management, completed, signed and filed pursuant to the regulations in this subpart. * * *
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> * * * * * * *
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> (g) The properly completed and signed lease application shall be filed in the proper office of the Bureau of Land Management. (Emphasis added)

45 FR 35164 (May 23, 1980).

[3] All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); 44 U.S.C. § 1507, 1510 (1976). Such regulations have the force and effect of law and are binding on the Department. Bernard P. Gencorelli, 43 IBLA 7 (1979); Fred S. Ghelarducci, 41 IBLA 7 (1979).

[4] In light of the specific direction on the lease application and the clear wording of 43 CFR 3112.2-1, appellants cannot convincingly allege their ignorance of the proper procedure for completing items (d) through (f). Estoppel will not lie where allegedly misleading advice is timely rebutted by existing regulations negating the advice given. Clayton H. Read, 49 IBLA 200 (1980). See also United States v. Ruby Co., 588 F.2d 697, 704 (9th Cir. 1978), for a discussion of additional equitable considerations regarding estoppel against the Government.

Appellants further claim that BLM misled FEC as to the proper manner of signing the application form. FEC alleges that a second BLM employee, in a telephone conversation with both FEC's general counsel and its secretary-treasurer, on July 10, 1980, advised that the manner in which the card was eventually signed, i.e., "FEC agent for D'Amico," was proper. The affidavit of the general counsel contains no specific information in support of this allegation. To the contrary, the affidavit reveals that the BLM employee expressed some uncertainty upon

learning from the general counsel of FEC's intended method of signing. 2/ After excusing herself with the words, "Okay, let me check it just to make sure," the BLM employee returned saying that it was proper to fill the application cards in with the words "Smith, Agent for Jones" and that it was not necessary to manually sign or insert a signature for the person on whose behalf FEC was preparing or executing the card. (Affidavit of general counsel, paragraphs 4 and 5).

An affidavit from the secretary-treasurer regarding this same conversation alleges that BLM's employee stated that signing the name of the filing agent on behalf of the client was a perfectly acceptable manner of executing the card. An additional allegation, viz., that FEC's manner of signing conforms with both the instructions on the application card and with the oral explanation of an unidentified BLM employee, is unsupported by specific information.

Although the aforementioned affidavits contain allegations that BLM considered FEC's method of signing to be proper, the little specific information provided by the affiants suggests that BLM gave accurate, albeit misunderstood, advice. The regulation set forth at 43 CFR 3112.2-1(b), quoted above, indicates that an application signed by anyone other than an applicant shall be rendered in a manner to reveal the name of the applicant, the name of the signatory, and their relationship. The example allegedly offered by the BLM employee and quoted by the general counsel, "Smith, Agent for Jones," is an example taken verbatim from this regulation. The advice, allegedly provided by BLM, to the effect that it is not necessary to manually sign or insert a signature for the person on whose behalf FEC acts is similarly accurate. If an agent is employed by an applicant, the applicant's signature need not and indeed will not appear anywhere on the application card. The further advice allegedly approving the signing of the name of the filing agent on behalf of the client is good advice. What FEC fails to understand, however, is the need for the identification of the person signing on behalf of a corporate agent.

Nevertheless, assuming for purposes of argument that BLM's employee advised FEC that a signature in the form of "FEC agent for D'Amico" was proper, appellants' argument based on estoppel must fail. As held earlier, appellants cannot convincingly allege that they were ignorant of the true facts. Regulation 43 CFR 3112.2-1(b) stands in the way of such allegation. This regulation, requiring that an application be rendered in a manner to reveal the name of the applicant, the name of the signatory and their relationship, provides able guidance to appellants. Where there exists a regulation timely rebutting allegedly misleading advice, estoppel will not lie. Clayton H. Read, supra.

2/ The BLM employee allegedly answered, "I think our samples even provide for that, don't they?" (Paragraph 4, Affidavit of the general counsel).

If a person chooses to use a corporate filing service to act as his agent in preparing and filing an application for an oil and gas lease, that corporate agent must use the signature box marked "Agent's Signature" on form 3112-1 (June 1980). It is not enough, however, that the corporate name be handwritten in this box. There must also appear the holographic signature of the person authorized to sign on behalf of the corporate filing service. Ordinarily, such a corporate signature might take the form "John Brown, Vice President, Acme, Inc." See Anchors and Holes, Inc., 33 IBLA 339 (1978). The additional requirements of 43 CFR 3112.2-1, requiring an application to be rendered in a manner to reveal the name of the applicant, the name of the signatory, and their relationship, suggest the following as an appropriate signature of a corporate filing service on behalf of Robert Jones, applicant: "John Brown, Vice President, Acme, Inc., agent for Robert Jones."

A third and final charge of estoppel by appellants is patently lacking and calls into question the allegations which for purposes of argument we have accepted as true. In this argument, appellants contend that on August 18, 1980, following the July 1980 drawing at issue, FEC's secretary-treasurer mailed to BLM for comment an application card "completed and executed in the same manner" as those submitted by FEC in the drawing (affidavit of secretary-treasurer, p. 3). Appellants maintain that BLM called the secretary-treasurer upon receipt of this card to inform her that the card was virtually without error and would in no way be unacceptable.

No serious estoppel argument can be maintained by such allegations. The alleged approval by BLM of the tendered application form, coming as it did after the drawing, does not allow appellants to argue that their July filings were submitted in reliance on BLM's alleged approval. Georgia-Pacific, supra, clearly requires that a party asserting an estoppel against the Government must have relied on the allegedly misleading advice.

Upon inspection of the application form submitted to BLM on August 18, 1980, we note wide discrepancies between this card and those submitted in the July 1980 drawing. Rather than the words "FEC agent for D'Amico" appearing in the box labeled "Agent's Signature", there appear the words "by FEC, agent by Hendel". 3/ Only the surname Hendel is holographically written. Above this box in an area labeled "Applicant's Signature," there appears the typewritten name of a fictitious applicant, followed by the word "applicant" holographically written. The contention by the secretary-treasurer that this application card was "completed and executed in the same manner" as those submitted by appellants in the drawing seriously calls into question the secretary-treasurer's ability to make distinctions. As we have accepted as true

3/ Marguerite Hendel is FEC's secretary-treasurer.

appellants' account of the facts, arguendo, no further comment need be made in this matter.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions of the State Office are affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Edward W. Stuebing
Administrative Judge